IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Prakash Chand Jain vs. Balu Ram

S.B.Civil First Appeal No.49/1987 under Section 96 C.P.C. against the judgment and decree dated 09.09.1986 passed by Shri Ganesh Chand RHJS, District Judge, Jaipur District, Jaipur in Civil Suit No.28/84 dismissing the suit of the appellant.

Date of Judgment :::::: August 18, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.R.P.Agarwal for appellant.

BY THE COURT (ORAL):-

The facts giving rise to this appeal in brief are that the plaintiff appellant filed a suit against the defendant respondent for recovery of Rs.10011/- (Rs.6501/- as principal sum and Rs.3510/- interest) before the learned trial court mentioning inter alia therein that the defendant took a loan of Rs.6501/- on account of marriage

of his daughter and on 18.5.1981 executed a promisory note in favour of firm Gheesa Lal Prakash Chand according to which the defendant was to pay interest at the rate of Rs.1.50/- per hundred per month. Despite of demand, when the amount was not paid, the plaintiff filed the suit for recovery of the principal sum along with interest.

In the written statement, the defendant respondent denied the fact of taking loan of Rs.6501/- on the occasion of marriage of his daughter. He also denied execution of the promisory note. It was also averred by the defendant that he is son of Ram Karan while the suit has been filed against Balu Ram son of Kalyan. Some objections regarding maintainability of suit by Prakash Chand in his personal capacity were also raised.

On the basis of the pleadings of the parties, the learned trial court framed three issues and after recording evidence of the parties and hearing both the sides, vide impugned judgment and decree dated 9th September, 1986 dismissed the suit of the plaintiff holding that the plaintiff has not been able to prove that any loan was given to the defendant. Hence, this appeal.

Learned counsel for the appellant has contended that

the learned trial court has neither properly appreciated nor critically examined the evidence of the plaintiff while deciding issue No.1.

After hearing learned counsel for the appellant, I have gone through the material and evidence available on record as well as the impugned judgment.

The relevant issue is issue No.1 which is to this effect `whether the defendant took a loan of Rs.6501/- from the plaintiff and agreed to pay interest at the rate of Rs.1.50 per hundred per month by executing a pronote on 18.5.1981 ?

At the very out set it is pertinent to mention that the plaintiff has not examined Harji Ram Chaudhary, scribe of the pronote Ex.1 in evidence. However, the plaintiff examined PW.3 Ram Kishan as an attesting witnesses of the pronote.

In his statement PW.1 Prakash Chand Jain has stated that the amount was given 10-15 days prior to the execution of the pronote on the occasion of marriage of defendant's daughter and the pronote was executed for the amount. But in the plaint or in the examination in chief there is no

mention about this fact. Thus, it is clear that on the date when the pronote was executed, no amount was given. There is also no mention either in the plaint or in the statement of this witness that Rs.5000/- were given in cash and Rs.1000/- were towards purchase of clothes but in the cross-examination this witness has deposed such facts for the first time. In such circumstances it is clear that there is variance in the pleadings and the statement of this witness. PW.2 Sukhdev has been examined as a witness to prove that the amount was given in his presence but in the plaint there is no such mention that at the time when the amount was given to defendant, this witness was present. Thus, presence of this witness becomes doubtful. He is the labourer of plaintiff and thus, can be said to be interested witness. He has stated that Rs.5,500/- were given to the defendant in his presence. PW.3 Ram Kishan who is the attesting witness of pronote has deposed that he cannot say whether the defendant put his thumb impression on the pronote or not. In his cross-examination this witness has admitted that in his presence no talks regarding interest took place. He has deposed that he cannot say whether the loan account was new or old. He has also not asked the defendant as to whether amount was given to him or not. PW.4 Ramu in clear terms has deposed that he has no knowledge of loan advanced to defendant for the

marriage of his daughter. He has also deposed that in his presence defendant did not take loan amount. Thus, from the evidence of plaintiff it is clear that the plaintiff has not been able to prove this fact that loan of Rs.6501/- was advanced to the defendant. Therefore, the finding of the learned trial court on issue No.1 being based on proper appreciation of the evidence on record, does not call for any interference.

For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma),J.

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